

UNITED STATES DISTRICT COURT

## DISTRICT OF SOUTH DAKOTA

## SOUTHERN DIVISION

<p>WILLIAM CODY,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ASHLEY MCDONALD, INDIVIDUAL AND OFFICIAL CAPACITY; TIM MEIROSE, INDIVIDUAL AND OFFICIAL CAPACITY; DARIN YOUNG, INDIVIDUAL AND OFFICIAL CAPACITY; HEATHER BOWERS, INDIVIDUAL AND OFFICIAL CAPACITY; JESSICA STEVENS, INDIVIDUAL AND OFFICIAL CAPACITY; KAYLA TINKER, INDIVIDUAL AND OFFICIAL CAPACITY; DR. MARY CARPENTER, MD, INDIVIDUAL AND OFFICIAL CAPACITY; LINDA MILLER-HUNOFF, INDIVIDUAL AND OFFICIAL CAPACITY; STEVE BAKER, INDIVIDUAL AND OFFICIAL CAPACITY; AND JENNIFER WAGNER, INDIVIDUAL AND OFFICIAL CAPACITY;</p> <p>Defendants.</p>	<p>4:14-CV-04155-RAL</p> <p>ORDER DENYING DEFENDANTS' MOTION TO STAY [DOCKET NO. 29]</p>
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This matter is before the court on plaintiff William Cody’s verified *pro se* complaint pursuant to 42 U.S.C. § 1983. Mr. Cody is an inmate at the South Dakota State Penitentiary (“SDSP”). On December 2, 2014, this court screened Mr. Cody’s complaint and ordered that a summons and copy of the complaint be served on each defendant. See Docket No. 8. Thereafter, defendants, who are officers or employees of the prison system of the state of South Dakota,

were served. On January 21, 2015, defendants filed a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6). See Docket No. 19. Mr. Cody opposed defendants' motion. See Docket No. 23. This same day this court entered a report and recommendation that defendants' motion be denied.

Mr. Cody recently filed his own motion for summary judgment. See Docket No. 26. Defendants responded to this motion with a motion seeking a stay, asking that they not be required to respond to Mr. Cody's summary judgment motion until this court resolves defendants' motion to dismiss. See Docket No. 29.

The recommended denial of defendants' motion to dismiss by this court was premised largely on the conclusion that defendants were in essence seeking summary judgment by inviting the court to make reference to materials outside the complaint. Mr. Cody's motion is actually a motion for summary judgment. The court believes that the most efficient use of judicial resources and the parties' resources is for the court to adjudicate Mr. Cody's motion. Defendants may respond, if they believe it is appropriate, with their own cross-motion for summary judgment or simply respond to Mr. Cody's motion. Accordingly, it is hereby

ORDERED that defendants' motion for a stay [Docket No. 29] is denied.

DATED July 1, 2015.

BY THE COURT:



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VERONICA L. DUFFY  
United States Magistrate Judge